

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KEVIN NORRIS,
Petitioner,

v.

STEVEN O'BRIEN,
Respondent,

FILED
IN CLERKS OFFICE

2006 JUN 27 P 1:35
Civil Action No. 05-11353-MLW

U.S. DISTRICT COURT
DISTRICT OF MASS.

PETITIONERS MOTION FOR DISCOVERY ORDER

Now Comes the Petitioner Kevin Norris, in the above-cited matter and respectfully moves this Honorable Court, Pursuant to Federal Rules of Civil Procedure Rule 6(a) for discovery.

As reasons thereof, the petitioner states that the **Discovery** requested herein is vital and necessary to substantiate his claim of illegal confinement. Said discovery is as follows:

1. An Order directing the suffolk County District Attorneys Office to allow access to certain physical evidence in it's possession from his criminal matter, Commonwealth V. Norris, SUCR-91-25197(1-9), e.g., samples from the Condom's and towel, for forensic DNA testing. Petitioner states that re-testing is warranted because he has obtained an affidavit from a Forensic expert, Donald Riley, Ph.D., attesting to need for re-testing due to the Boston Police crime Labs, and Cellmarks negligence in their testing protocols and the mishandling of the samples done in September of 2000. See (Donald Riley, Ph.D., affidavit attached hereto).

2. Order the Suffolk County District Attorneys Office, to direct the Boston Police Crime Lab to conduct another saliva non-secretor/secretor test.

3. Allow the petitioner to serve upon Suffolk County Assistant District Attorney, Amanda Lovell, Ten (10) interrogatory questions pertaining to the DNA re-testing issue, Superior Court Justice Charles Spurlocks, decision in regards to the DNA

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testing issue and testimony at trial concerning the Forensic evidence.

4. Allow petitioner to serve upon his former trial Counsel Bruce R. Taub, Ten (10) interrogatory questions pertaining to his pre-trial investigation into Petitioners sentencing strategy.

Furthermore, the Petitioner that the herein evidence will substantiate his claims of "Actual Innocence", Justice Spurlocks, error in denying his motion for new trial and request for further testing due to facts not in evidence, and that his former trial counsel was ineffective at sentencing.

"Where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the duty of the Court to provide the necessary facilities and procedures for an Adequate inquiry." Quoted in Rules Governing § 2254 Cases Rule 6(a). See also Teague V. Scott, 60 F.3d 1167, 1172 (5th cir. 1995)("Denial of an opportunity for discovery is an abuse of discretion when the discovery is necessary to fully develop the facts of a claim."). The petitioner further implores this court to look to the decision's reach in Toney V. Gammon, 79 F.3d 693 (8th Cir. 1996); Jones V. Wood, 114 F.3d 1002 (9th Cir.1997), both allowing Rule 6(a) discovery via DNA and other forensic testing to prove their Habeas Corpus claims.

Lastly, the petitioner should be granted discovery since the Appellate court failed to address his claims due to their decision to rely solely on the Commonwealth's memorandum of Law. The practice of adopting the Commonwealths Memorandum of law, was scrutinized in Restucci V. Spencer, 249 F.Supp.2d 33 (D.Mass.2003).

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WHEREFORE, the petitioner prays that this Honorable Court:

- 1) Allow this motion and grant the following discovery:
 - A. Access to the Physical evidence in the possession of the Suffolk County District attorneys office;
 - B. Order the Suffolk county District Attorney office to file a motion with the Superior Court department, for Re-testing and funds for said testing;
 - C. Allow the petitioner to serve interrogatories on Amanda Lovell, ADA, and Attorney Bruce R. Taub;
 - D. Order the suffolk County District Attorneys office, to direct the Boston Police Crime Lab, to conduct another non-secretor/secretor test;

Respectfully Submitted

By,



Kevin Norris, Pro se
NCCI- Gardner
P.O.BOX 466
Gardner, MA 01440

Dated: June 21, 2006

CERTIFICATE OF SERVICE

I Kevin Norris, do hereby certify that a true copy of the enclosed motion was served upon the respondents Counsel, Jonathan Ofilos, on June 21st 2006, by placing a copy in the prison mail box and forwarding via first class mail.

2006 JUN 27 P 1:35

Kevin Norris

U.S. DISTRICT COURT
DISTRICT OF MASS.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
NO. 91-25197

COMMONWEALTH

VS.

KEVIN NORRIS

Affidavit

1. My name is Donald E. Riley, Ph.D. I am a biochemist with over 28 years, full-time research experience in DNA-related issues. I have consulted in over 200 forensic DNA cases. My curriculum vitae is attached.
2. I was asked by attorney, Ann Goldbach to review scientific materials in the instant case. It was also requested that I conduct the review without charge, which I agreed to.
3. In the past, I have conducted similar reviews for hire by the same attorney's office.
4. In the instant case, I reviewed the Cellmark laboratory report dated September 11, 2000 as well as laboratory notes, computer-generated data, tracings (also known as electropherograms) quantity data and a variety of letters related to the case.
5. The laboratory report cites match probabilities that are so rare as to potentially imply certainty in the strength of the match.
6. It is my understanding that the defendant maintains his innocence and is requesting a retest.
7. The scientific system does have important criteria that were not met in the instant case, to the best of my knowledge. One of these is a demonstration of reproducibility.
8. A retest is likely to either demonstrate reproducibility, confirming the original Cellmark results and conclusions, or, may produce conflicting results which

would cast doubt on the original results.

9. For example, the sample identified as sperm contained in a condom could have been misidentified or inadvertently switched with another sample. If the condom sample were confused with the known standard, or vice versa, an erroneous impression of a match could have occurred. Accidental switches leading to erroneous conclusions have been known to happen multiple times within the brief history of forensic DNA testing. For this reason, the extremely rare match probabilities are misleading as to the level of certainty of the reported conclusions.
10. To the best of my knowledge, the condom sample was shipped to Cellmark in the same envelope as the defendant's known sample. It is not entirely clear how these samples were separated within the envelope. The National Research Counsel's 1996 report on forensic DNA testing recommended that particular attention should be given to keeping evidence samples separated from reference samples (p 83).
11. If evidence and the reference sample were shipped in the same envelope, this represents an unnecessary risk of cross-contamination.
12. The amount of sperm DNA found in the condom mitigates against the likelihood that such DNA represents a contaminant. The copy of the sperm fraction photograph present in the case-file appears to document many sperm. Still, the presence of evidence and known standard in the same envelope, if that occurred, is disturbing.
13. On August 22, 2000 the condom sperm DNA fraction was again brought near the defendant's known DNA sample in the same time and space, according to my reading of the Amplification record. This represents another unnecessary risk of cross-contamination or sample confusion.
14. For these reasons, most scientists I am familiar with would recommend testing of the samples in an independent laboratory. The results could then be compared with the original results to either confirm or cast doubt on the original results.

Signed under the pains and penalties of perjury:

Donald E. Riley, Ph.D. 9-8-05
Donald E. Riley, Ph.D.

CURRICULUM VITAE
of
DONALD E. RILEY, Ph.D.

CURRENT ACADEMIC APPOINTMENTS

Departments of Urology, School of Medicine
Research Biochemist, Veterans Affairs Medical
Center; Seattle, WA

LOCATION

University of Washington Research at:
VA Puget Sound Health Care System
1660 S. Columbian Way
Seattle, WA 98108
Tel. (206) 277-3608/ Fax. (425)743-5816
E. mail: dr51@comcast.net

EDUCATION¹

Undergraduate

University of Washington
Ph.D. in Biochemistry, 1976

Washington State University
B.S. in Chemistry, 1972

POSTDOCTORAL TRAINING

Princeton University Postdoctoral Fellowship in Biochemistry (DNA-Molecular Biology)	1976-78
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PROFESSIONAL POSITIONS

Assistant Member, The Fred Hutchinson Cancer Research Center	1978-82
Research Associate, Department of Genetics, University of Washington	1982-90
Res. Assist. Prof., Departments of Urology/ Pathobiology Joint Ap	1990-95
Res. Assoc. Prof., Departments of Urology/ Pathobiology Joint Ap.	1995-05
Research Biochemist, Department of Veterans Affairs, Seattle, WA	1999-05
Molecular-Cellular Biology Program Faculty	1998-03
National Institutes of Health Advisory Committee Panel	1996-02
United States Department of Agriculture Advisory Panel	1998-02
DNA Consultant/ Expert Witness qualified in US Federal Courts and states: Arizona, California, Colorado, Illinois, Indiana, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New York, Oregon, Utah, South Dakota, Vermont, Washington. Wisconsin and Vancouver, BC.,	1993-05

¹Dr. Riley also attended Central Washington State University, the University of Washington, and Northwestern University before attending the University of Washington Ph.D. program.

CURRICULUM VITAE of DONALD E. RILEY (continued)

HONORS

Veterans Affairs Merit Review Award (DNA)	2005-08
Veterans Affairs Merit Review Award (DNA)	2000-04
Molecular Biologist for paper awarded, "Best UTI Paper in the World for Two Years" (International Society for Chemotherapy)(DNA)	2000-01
Sexually Transmitted Diseases CDC New Investigator Award (DNA)	1992-94
Second Place Presentation 43rd N.W. Urological Assoc. Symp.(DNA)	1994
Royalty Research Fund Award (DNA)	1993
Cumulative Grade Point Average, 4.0	1968-72
Top Percentile Score, National Science MCAT	1971
High Scholarship Roll	1969-72
Phi Lamda Upsilon National Society Honorary	1970-72
Dow Chemical Co. Scholarship	1971
Chemical Rubber Co. Award for Achievement in Chemistry	1969

INVENTION

GC rich cartridge US patent no. 4,966,841. Approved, Oct. 30,1990. Licensed to U.S. government, 1991; Licensed to 5-1, a biotechnology enterprise, 1994.

PUBLICATION SYNOPSIS

Dr. Riley published 65 scientific, peer-reviewed articles focusing on DNA, molecular and cell biology serving as first author on 39 articles. Dr. Riley authored a popular article, entitled, "DNA Testing: An Introduction for Non-Scientists", requested as course material for The Women's Bar Association of New York, Annual Meetings (2002, 2003) and The National Reference Center for Bioethics Literature Symposium, (2001).

TEACHING ACTIVITIES

Teaching Assistant for Edmond Fischer (Nobel Laureate)	1974-75
Instructor for Pathobiology Journal Club	1994
Graduate student mentor, Pathobiology	1993-01
Graduate Faculty, Molecular and Cellular Biology Program	1992-01
Vertical advisor, UW medical students	1993-00
Mentor for undergraduate 499 research	1991
Pathobiology Lectures in Medical Techniques Course	1992-96
Pathobiology Lecture to Urology Department residents	1994
DNA Lecture and Seminar, St. Louis, MO Public Defenders	1996
Lectures in Forensic Science Course, Dept of Zoology, UW	1997-99
Mentor for 499 Research Projects	1991, 2000
Mentor for National Aeronautical and Space Administration (NASA) Space Grant	2000-01
Thesis committee for Cheah PhaikYeong (Universiti Sains Malaysia)	2002

CURRICULUM VITAE of DONALD E. RILEY (continued)

RESEARCH INTERESTS

Dr. Riley's interests are in DNA technology used in organism biology and identification including genetic variations related to inherited and infectious disease. He is interested in native DNA structure, sequences, human genetic variation, short tandem repeat sequences, DNA degradative mechanisms and use of DNA technology to research prostate diseases such as prostatitis and prostate cancer. He sequenced 20 thousand base pairs of human DNA including STR, Alu and LINE repeats and 18 thousand base pairs of bacterial DNA used to assist identification. He designed polymerase chain reaction (PCR)-DNA tests for identification of single copy human genes, human STR loci. He developed DNA-based research-diagnosis of *Trichomonas vaginalis* infections in men and women. He also designed or adapted DNA tests for research-based diagnosis of *Tritrichomonas foetus*, *Giardia lamblia*, *Trypanosoma sp.*, *Acanthamoeba sp.*, and *Leishmania sp.*, *Chlamydia trachomatis*, *Ureaplasma urealyticum*, *Mycoplasma genitalium*, Herpes simplex viruses types 1 and 2 and cytomegalovirus. Dr. Riley uses molecular techniques in collaborative research with professor-surgeons and other clinical scientists. He designed original, RNA-PCR for prostate cancer research, inverse PCR, and real-time PCR tests. Dr. Riley has researched the optimal binding temperatures of DNA probes and primers used in human identity testing, has developed several, original polymorphic STR tests and researches STR organization and usage patterns. Dr. Riley published several recent (2004 and 2005) articles in prestigious journals regarding function and genetic usage of STRs.

OFF- CAMPUS PROFESSIONAL ACTIVITIES

Consultant and Expert Witness on the use of DNA, RFLP, PCR and STR evidence in criminal and paternity cases.

Dr. Riley has also performed consultations for forensic DNA cases in The U.S. Australia and Canada and DNA consultations for private farming interests in South Africa.

Biotechnology Consultant

Consultant for Immunodiagnostics Inc., Genelex Corp., Probe Diagnostics.

Medcon Consultant

Recognized consultant for WWAMI telemedicine program. Washington, Alaska, Montana, Idaho.

BIBLIOGRAPHY

of Donald E. Riley, Ph.D.

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2. Riley, D. E., Keller, J. M. and Byers, B. (1975) The Isolation and Characterization of an Inner Nuclear Envelope Complex from Cultured HeLa Cells. **Fed. Proc.** 34: 583.
3. Riley, D. E. and Keller, J. M. (1976) The Polypeptide Composition and Ultrastructure of Nuclear Ghosts Isolated from Mammalian Cells. **Biochim. Biophys. Acta** 444: 899-911.
4. Keller, J. M. and Riley, D. E. (1976) Nuclear Ghosts: A Non-membranous Structural Component of Mammalian Cell Nuclei. **Science** 193: 399-401.
5. Keller, J. M. and Riley, D. E. (1976) Cell Cycle Alterations in the Morphology of Ghosts Isolated from HeLa Cell Nuclei. **J. Cell. Biol.** 70: 174a.
6. Riley, D. E. and Keller, J. M. (1976) The Ultrastructure of Ghosts Isolated from HeLa Cell Nuclei. **Fed. Proc.** 35: 1449.
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8. Riley, D. E. and Keller, J. M. (1978) The Ultrastructure of Non-membranous Nuclear Ghosts. **J. Cell Sci.** 32: 249-268.
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10. Riley, D. E. and Weintraub, H. (1979) Conservative Segregation of Parental Histones During Replication. **Proc. Natl. Acad. Sci.** 76: 328-332.
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14. Riley, D. E., Canfield, T. K. and Gartler, S. M. (1984) Chromatin Structure of Active and Inactive Human X-Chromosomes. **Nucl. Acids Res.** 12: 1829- 1845.
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- Berger, R.E., Hillier, S., Riley, D., Roberts, M., Rothman, I., Krieger, J.N. (1994) Prostatic Biopsy Cultures in Men with and without the Symptoms of Prostatitis. **American Urological Association, Western Section.**
- Riley, D.E., Berger, R.E., Kenny, G.E. and Krieger, J.N. (1994) Use of the Polymerase Chain Reaction to Detect Mycoplasma genitalium in Cases of Idiopathic Prostatitis **Abstract for the Northwest Urological Society, 43rd Symposium.**
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